

## 46 Am. Jur. 2d Judges § 19

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### Judges

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### IV. Termination or Suspension of Office; Censure

#### B. Impeachment and Removal

## § 19. Grounds for removal of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  11

### A.L.R. Library

[Consorting with, or maintaining social relations with, criminal figure as ground for disciplinary action against judge, 15 A.L.R.5th 923](#)

[What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office, 10 A.L.R.5th 139](#)

[Disciplinary action against judge on ground of abusive or intemperate language or conduct toward attorneys, court personnel, or parties to or witnesses in actions, and the like, 89 A.L.R.4th 278](#)

[Removal or discipline of state judge for neglect of, or failure to perform, judicial duties, 87 A.L.R.4th 727](#)

[Disciplinary action against judge for engaging in ex parte communication with attorney, party, or witness, 82 A.L.R.4th 567](#)

[Sexual misconduct as ground for disciplining attorney or judge, 43 A.L.R.4th 1062](#)

[First Amendment protection for judges or government attorneys subjected to discharge, transfer, or discipline because of speech, 108 A.L.R. Fed. 117](#)

### Forms

Forms relating to grounds for removal, generally, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

Grounds for removal of a judge from office are usually prescribed by the constitutions or statutes of the various states,<sup>1</sup> or by the applicable state codes of judicial conduct.<sup>2</sup> Among the common grounds for removal of a judge from office are willful neglect of duty,<sup>3</sup> corruption in office,<sup>4</sup> intemperance to such an extent as makes the judge unfit for the discharge of official duties,<sup>5</sup> incompetency,<sup>6</sup> misconduct,<sup>7</sup> violations of a judicial canon requiring that judges avoid impropriety and the appearance of impropriety,<sup>8</sup> or the commission of any offense involving moral turpitude while in office or under color of office.<sup>9</sup>

A judge's actions which are a result of a mistaken, but honest, interpretation of the law and judicial authority does not violate the obligation to be faithful to the law and maintain professional competence in it,<sup>10</sup> but action made contrary to clear and determined law about which there is no confusion or question as to its interpretation and where the complained-of legal error is egregious, made as part of a pattern or practice of legal error, or made in bad faith, will constitute misconduct.<sup>11</sup> An objective standard for determining when reversible legal error constitutes judicial misconduct under the code of judicial conduct shields from disciplinary action legal error that is reversible on appeal where the law had not been clear prior to the judge's determination or where the judge engaged in simple abuse of authority or mistake of law; on the other hand, if error in following the law were willful, it could fall into either the egregious or bad faith categories, particularly if it impacted fundamental rights clearly and unmistakably known to every competent jurist such that their violation brings the judicial process into public disrepute.<sup>12</sup>

Some state statutes or constitutions provide for the removal of judges found guilty of willful misconduct; under such statutes, bad faith may<sup>13</sup> or may not be a necessary element of such misconduct.<sup>14</sup> For purposes of a judicial disciplinary proceeding, willful misconduct in office is the improper or wrong use of power of the judicial office by a judge acting intentionally or with gross unconcern for such conduct and generally in bad faith.<sup>15</sup>

Acts of misconduct in office are a ground for removal of a judge, although such acts occurred during a previous term of office.<sup>16</sup> A judge should not be able to avoid discipline by simply resigning or voluntarily leaving office.<sup>17</sup> A judge may even be removed for misconduct stemming from acts committed by the judge before the party took office;<sup>18</sup> however, there is also authority to the contrary.<sup>19</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Judicial candidate's bias against criminal defendants and criminal defense attorneys, and in favor of victims via social media statements pointed to future misconduct, and thus sanction of removal was warranted; candidate did not fully accept responsibility for her actions, and bias was sufficient to create fear on the behalf of criminal defendants that they would not receive a fair trial or hearing. West's F.S.A. Code of Jud.Conduct, Canon 7A; [Fla. Bar Rule 4-8.2](#). [Re Santino](#), 257 So. 3d 25 (Fla. 2018).

Judicial disciplinary commission evaluating alleged pattern of uncooperative and unseemly behavior of judge who was serving her second 10-year term could consider actions that took place in judge's first term, despite her claim that allegations of misconduct were not brought to attention of state governor when she was reappointed and confirmed for her second term as

judge, since conduct reflected a larger pattern of misconduct occurring over both terms, and, under rules, any judge could be sanctioned for his or her conduct so long as the judge remained in office. Md.Rule 18-407. [Matter of Russell](#), 464 Md. 390, 211 A.3d 426 (2019).

Judge's conduct in rescinding an arrest warrant signed by another judge in a matter in which judge was a party constituted willful misconduct and violated the code of judicial conduct that required a judge to respect and comply with all laws and act in a manner that promoted public confidence in the integrity and impartiality of the judiciary, to not allow their family, social, or other relationships influence the judge's judicial conduct or judgment, and to be faithful to the law and maintain professional competence in it. Miss. Code of Jud. Conduct, Canons 1, 2A, 2B, 3B(1,2), 3E(1); [Miss. Code Ann. § 97-11-1](#). [Mississippi Commission on Judicial Performance v. Burton](#), 268 So. 3d 565 (Miss. 2019).

Judge violated section of Code of Judicial Conduct prohibiting conduct prejudicial to the administration of justice that brings judicial office into disrepute when he failed to timely rule in 28 civil cases; one case had not been resolved for seven years, and the most recent of the cases had been pending for over seven months before a formal complaint was filed. [Miss. Const. art. 6, § 177A](#). [Mississippi Commission on Judicial Performance v. McGee](#), 266 So. 3d 1003 (Miss. 2019).

Removal from office was appropriate sanction for judge's conduct, which included acting impatiently, raising his voice, making demeaning and insulting remarks, striking witness testimony and dismissing petitions for insufficient proof as a result of counsel's reflexive use of the word "okay," and failing to afford litigants the right to be heard before imposing counsel fees, all of which was significantly compounded by his persistent failure to cooperate with the investigation by the New York State Commission on Judicial Conduct, and fact that misconduct began within one year of a prior censure. [Matter of O'Connor](#), 32 N.Y.3d 121, 112 N.E.3d 317 (2018).

Town court judge violated his ethical duty, warranting his removal, by using his judicial position to interfere in the disposition of his daughter's traffic ticket, and by telling prosecutor that in his opinion and that of his colleagues the matter should be dismissed. 22 NYCRR 100.2, 100.2(A–C). [In re Ayres](#), 30 N.Y.3d 59, 63 N.Y.S.3d 737, 85 N.E.3d 1011 (2017).

Town court judge's acts of sending eight letters, including five ex parte communications, to County Court in connection with appeal from restitution order he had issued in a case, advocating for dismissal of the matter, were highly improper, warranting his removal as a judge; letters contained argumentative and biased statements in which judge asserted that the appeal was meritless and that defense counsel's arguments were ludicrous and totally beyond any rational thought process, and the letters disparaged County Court, defendant, and defense counsel. 22 NYCRR 100.3(B)(4, 6). [In re Ayres](#), 30 N.Y.3d 59, 63 N.Y.S.3d 737, 85 N.E.3d 1011 (2017).

Court of Appeals judge violated Canon of the Code of Judicial Conduct prohibiting judges from allowing family, social, or other relationships to influence their judicial conduct or judgment by failing to prevent or address misconduct committed by his executive assistant, who was a close personal friend; judge was aware of executive assistant's inability to produce good work product but imposed no consequences, judge ignored executive assistant's aggressive and harassing behavior toward judge's female law clerks, and judge attempted to downplay the seriousness of the allegations against executive assistant during investigations of the misconduct by court's human resources office and the Judicial Standards Commission. [N.C. Code of Jud. Conduct, Canon 2\(B\)](#). [In re Murphy](#), 376 N.C. 219, 852 S.E.2d 599 (2020).

In proceeding on judicial discipline, rather than evaluate the motives of a judge, a finding of conduct prejudicial to administration of justice requires objective review of the conduct itself, results thereof, and the impact such conduct might reasonably have upon knowledgeable observers. [In re Pool](#), 377 N.C. 442, 2021 -NCSC- 61, 858 S.E.2d 771 (2021).

Circuit court judge "manifested" prejudice in performance of judicial duties, on basis of sexual orientation, in violation of judicial conduct rule, through his implementation of process for screening wedding applicants to ensure they were not same-sex applicants, who he refused to marry, even though such applicants could lawfully marry under state law; while process

was designed to discreetly handle same-sex marriage requests without anyone outside judge's chambers being made aware of refusal, judge's course of action was evident to staff members, who he directed to check court registry for gender information about each requesting couple and to tell same-sex couples he was not available, which actions had not been taken before state's constitutional same-sex marriage ban was invalidated. Code of Jud. Conduct, JR 3.3(B). [Day](#), 362 Or. 547, 413 P.3d 907 (2018).

Municipal court judge's ex parte communications with another judge regarding the second judge's favored parties in cases before the first judge were sufficient to warrant sanction of removal; first judge acknowledged that her actions were of a kind that were an affront to the administration of justice and diminish the judiciary at large, offending conduct occurred while the first judge was acting in her judicial capacity, and Court of Judicial Discipline was not obliged to prioritize first judge's character testimony over the interests of the public and judicial system at large. [Pa. Const. art. 5, § 18\(d\)\(1\)](#). [In re Segal](#), 173 A.3d 603 (Pa. 2017).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Stanley v. Jones](#), 197 La. 627, 2 So. 2d 45 (1941).
- 2 [In re Justice of Peace Cook](#), 906 So. 2d 420 (La. 2005).  
Violations of the canons contained in the code of judicial conduct can serve as a basis for the disciplinary action provided for by state constitution. [In re Williams](#), 85 So. 3d 5 (La. 2012).
- 3 [Matter of MacDowell](#), 57 A.D.2d 169, 393 N.Y.S.2d 748 (2d Dep't 1977).
- 4 [In re Jaffe](#), 59 Pa. D. & C.4th 477, 814 A.2d 308 (Ct. Jud. Discipline 2003).  
The appropriate discipline for a circuit court judge who had been found guilty of serious campaign finance improprieties, including a violation of state campaign financing laws, as well as of deliberate efforts to mislead the voting public as to experience and qualifications to serve as judge, in violation of the code of judicial conduct, was removal from office. [In re Renke](#), 933 So. 2d 482 (Fla. 2006).  
As to bribery of judicial officials, generally, see [Am. Jur. 2d, Bribery](#) §§ 4, 11 to 13.
- 5 [In re Inquiry Concerning A Judge](#), Nos. 270 & 280 Hill, 357 N.C. 559, 591 S.E.2d 859 (2003).
- 6 [In re Charges of Judicial Misconduct](#), 404 F.3d 688 (2d Cir. Jud. Council 2005); [In re Conduct of Ginsberg](#), 690 N.W.2d 539 (Minn. 2004).
- 7 [Gormley v. Judicial Conduct Commission](#), 332 S.W.3d 717 (Ky. 2010).  
A judge's conduct in making false statements under oath in connection with a divorce proceeding, improperly listing cases on a no-progress docket, having excessive absences, and allowing a social relationship to influence the release of a criminal defendant from probation warranted the judge's removal from office. [In re Nettles-Nickerson](#), 481 Mich. 321, 750 N.W.2d 560 (2008).  
Although sanction of removal of a judge from the bench is reserved for those instances where the conduct is truly egregious and not merely an exercise of poor judgment, the "truly egregious" standard is measured with due regard to the fact that judges must be held to a higher standard of conduct than the public at large. [Matter of Collazo](#), 91 N.Y.2d 251, 668 N.Y.S.2d 997, 691 N.E.2d 1021 (1998).
- 8 [Judicial Discipline and Disability Com'n v. Simes](#), 2009 Ark. 543, 354 S.W.3d 72 (2009).
- 9 [In re Daisy](#), 359 N.C. 622, 614 S.E.2d 529 (2005).
- 10 [Ohio State Bar Assn. v. Shattuck](#), 85 Ohio St. 3d 334, 1999-Ohio-271, 708 N.E.2d 199 (1999).
- 11 [In re Barr](#), 13 S.W.3d 525 (Tex. Review Trib. 1998).
- 12 [In re DiLeo](#), 216 N.J. 449, 83 A.3d 11 (2014).  
Family court judge did not commit a good faith legal error, but acted in bad faith in erroneously ruling on the issue of proper venue/forum for an ex-wife's request for change of custody, and therefore the judge was subject to discipline, where the judge failed to provide the ex-husband even the most basic elements of procedural due process, the judge thwarted the ex-husband's every attempt to present evidence in support of the ex-husband's position, the judge acted as a judge of a family court that had no jurisdiction over the matter that had been presented to the judge through an unusual and extraordinary procedure, and when the ex-

husband's counsel would not be bullied into going along with the judge's attempts to circumvent procedures and the law, the judge excluded counsel and dealt directly with the ex-husband, threatening the ex-husband with the loss of custody of another child unless the ex-husband accepted the judge's "agreed" order. [Gormley v. Judicial Conduct Commission](#), 332 S.W.3d 717 (Ky. 2010).

[In re Inquiry Concerning Judge Robertson](#), 277 Ga. 831, 596 S.E.2d 2 (2004).

[In re Chaisson](#), 549 So. 2d 259 (La. 1989).

[Mississippi Com'n on Judicial Performance v. Harris](#), 131 So. 3d 1137 (Miss. 2013).

[In re Rome](#), 218 Kan. 198, 542 P.2d 676 (1975).

[Mississippi Com'n on Judicial Performance v. Bustin](#), 71 So. 3d 598 (Miss. 2011).

[Inquiry Concerning Hapner](#), 718 So. 2d 785 (Fla. 1998).

Removal of a circuit court judge from office was warranted on the basis of the party's conduct as an attorney before the party was elected to the bench in which the attorney was involved in making a quick and ethically flawed aggregate settlement agreement to settle claims against an insurer that involved the release of the clients' bad faith claims, though the clients were not informed and were not allowed to participate in that recovery; such conduct was fundamentally inconsistent with the responsibilities of judicial office and diminished the public's confidence in the integrity of the judicial system. [In re Watson](#), 174 So. 3d 364 (Fla. 2015), cert. denied, 136 S. Ct. 863, 193 L. Ed. 2d 766 (2016).

A judge's admitted and knowing practice of law while serving as a county judge, and the judge's advice to a criminal client that the client flee the United States to avoid prosecution, given while the judge was an attorney in private practice, warranted removal from judicial office, where ethical violations were grievous and formed part of same course of conduct, in that they involved representation of same client. [In re Henson](#), 913 So. 2d 579 (Fla. 2005).

[Kennick v. Commission On Judicial Performance](#), 50 Cal. 3d 297, 267 Cal. Rptr. 293, 787 P.2d 591, 87 A.L.R.4th 679 (1990) (disapproved of on other grounds by, [Doan v. Commission on Judicial Performance](#), 11 Cal. 4th 294, 11 Cal. 4th 474a, 45 Cal. Rptr. 2d 254, 902 P.2d 272 (1995)).

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